

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

Writ Petition No. 5852 (S/S) of 2001
Old Number
(Writ Petition No. 34139 of 1997)

Smt. Munni Devi
Wife of Sri late Amar Singh,
Resident of Village-Gawaine Short,
Near office of Public Works Department,
Kotdwar,
District-Pauri Garhwal.**Petitioner.**

V e r s u s.

1. State of U.P. through Secretary, Public Works Department, Government of U.P., Lucknow.
 2. The Principal Chief Engineer, Public Works Department, U.P. at Lucknow.
 3. The Superintending Engineer, 63rd Circle, Public Works Department, Jaharikhal, District- Pauri Garhwal.
 4. The Executive Engineer, Asthai Khand, Public Works Department, Kotdwar, District – Pauri Garhwal.
-**Respondents.**

Hon'ble M.M. Ghildiyal, J.:

Heard Sri B.D. Upadhyay, learned counsel for the petitioner and learned standing counsel, who has accepted notices on behalf of the respondents.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of Mandamus commanding the opposite parties to appoint the petitioner on any suitable post in the Department in accordance with Government Order dated 16.03.1996 issued by State Government and Circular

Letter dated 27.06.1996 issued by Principal Chief Engineer, U.P., Lucknow.

The submission of the petitioner is that husband of the petitioner was appointed by the Executive Engineer in the year 1978 on the post of Beldar on daily wage basis and he worked on the said post till 25.06.1983. With effect from 26.06.1983 the husband of the petitioner was appointed on the post of Beldar as work charge employee and he worked till 02.01.1993. The husband of the petitioner was died on 03.01.1993 leaving behind one widow (petitioner), two minor daughter and two sons. After the death of the petitioner's husband on 05.01.1993 petitioner moved application to the Executive Engineer- respondent no. 4 for providing her appointment under Dying in Harness Rules. The said application was forwarded by the Executive Engineer to the Superintending Engineer- respondent no. 3 on 07.01.1993 with his recommendation.

On 02.06.1995 Superintending Engineer passed an order directing the Executive Engineer to appoint the petitioner on daily wage basis on humanitarian ground. In pursuance to the aforesaid order passed by respondent no. 3, the petitioner was appointed on daily wage basis on 26.05.1995 and was permitted to continue till only 26.12.1995.

The submission of the petitioner is that appointment provided under Dying in Harness Rules by the respondents should not be for particular period but it should be on regular basis. Respondents have provided employment to the petitioner under Dying in Harness Rules only for six months.

Learned counsel for the petitioner has relied upon the Government Order issued by the State Government dated

16.03.1996 by which it is provided that the dependants of the deceased employee, who has worked as work charge employee for ten or more years are entitled to get benefits for employment under Dying in Harness Rules. He has also drawn my attention towards the Circular Letter dated 27.06.1996 issued by Principal Chief Engineer, Public Works Department, Lucknow wherein it is stated that the dependents of the daily wage employee, who has worked for ten years or more are also entitled to get appointment on daily wage basis on muster roll in the Department.

It is not disputed that the petitioner's husband was appointed on daily wage basis in the year 1978 and he continued till 1983 on daily wage basis and thereafter, he worked till 02.01.1993 with the Department as work charge employee meaning thereby he has completed 15 years of service in the Public Works Department as daily wage employee as well as charge employee.

Counter affidavit has been filed by the respondents. The stand taken by the respondents in the counter affidavit is that aforesaid Government Order and Circular letter are not applicable upon the petitioner's husband, as the petitioner's husband has not completed ten years' of service either as daily wage employee or as work charge employee. The petitioner's husband has completed more than five years of service as daily wage employee and thereafter, he has completed about ten years of service as work charge employee. Thus, in total the petitioner's husband has completed about fifteen years of service with Public Works Department. Dependents of both categories of employees are entitled to get benefit if the employee has completed ten years service. The husband of

the petitioner has completed more than fifteen years of service as daily wager and under work charge establishment.

In view of the aforesaid circumstances, petitioner is entitled to get benefit of Dying in Harness Rules. Order dated 02.12.1997 rejecting the claim of the petitioner on the ground that petitioner's husband has not completed ten years either as daily wage employee or as work charge employee is not sustainable in the eyes of law and the same is quashed.

Executive Engineer, Public Works Department, District-Pauri Garhwal is directed to consider the claim of the petitioner, in view of the above observations, for providing her appointment under Dying in Harness Rules within a period of three months from the date of production of certified copy of this order.

With this direction the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

August 22, 2005
SKSharma